

McAuliffe  
144595



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Pro-Fab, Inc.  
**File:** B-243607  
**Date:** August 5, 1991

Jim Rice for the protester,  
Craig E. Hodge, Esq., and Bradley J. Crosson, Esq., Department  
of the Army, for the agency.  
Susan K. McAuliffe, Esq., Andrew T. Pogany, Esq., and  
Michael R. Golden, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

Protest is sustained where agency improperly canceled solicitation on the basis of changed requirements which were not so substantial as to warrant cancellation, where changed requirements were previously the subject of a solicitation amendment under which offerors submitted best and final offers, and where agency's assertion of the potential for increased competition or cost savings upon resolicitation of identical requirement is not supported by the record.

### DECISION

Pro-Fab, Inc. protests the cancellation of request for proposals (RFP) No. DAAA09-89-R-1588, issued by the Department of the Army for 2,913 M2 machine gun bolts. Pro-Fab contends that the Army lacked a reasonable basis to cancel the solicitation and that it should be awarded the contract under the RFP because it submitted the lowest-priced, acceptable offer.

We sustain the protest.

The RFP, a 100 percent small business set-aside, was issued on November 28, 1989, and contemplated the award of a firm, fixed-price contract to the low, acceptable offeror. Of the 119 prospective offerors solicited, six offerors submitted proposals by the December 28 closing date. Best and final offers (BAFOs) were requested and received by April 19, 1990. Pro-Fab, which had submitted the fourth low initial offer, submitted the apparent third low BAFO after a lower-priced initial offeror failed to submit a BAFO. The apparent low offeror, which was found nonresponsive after a negative preaward survey, declined to file for a Certificate of

Competency (COC) with the Small Business Administration (SBA) and was determined ineligible for award. The apparent second low offeror, which was also found nonresponsible by the Army, was denied a COC by the SBA. Consequently, Pro-Fab became the next low offeror in line for award. The Army conducted a preaward survey of Pro-Fab and found the firm nonresponsible. The protester's offer was forwarded to the SBA on November 7 for a COC determination. The SBA issued a COC on behalf of Pro-Fab on December 6.

Due to the agency's need to add an engineering change proposal and additional clauses to the RFP, and in light of a required change in Pro-Fab's proposed delivery schedule which had not been noticed earlier, negotiations were conducted with the remaining three offerors. On January 16, 1991, a second request for BAFOs was issued to these three offerors, including Pro-Fab. This BAFO request, which added the five new solicitation clauses and an engineering change proposal to the RFP, required offerors to submit their responses by January 31. This request restated the RFP's delivery requirements and advised the protester that if its BAFO confirmed its original proposal (i.e., without taking exception to the terms of the amended RFP), Pro-Fab should submit the following reply as its BAFO:

"I have reviewed the engineering data and additional clauses furnished with Solicitation DAAA09-89-R-1588, request for best and final offers, dated January 16, 1991, and have found that it is complete and legible and I fully understand the engineering requirements of the proposed contract and comply therewith. At the request of the Contracting Officer, I have carefully reviewed all the elements of my offered price and hereby confirm that the unit price of [\$\_\_\_] with First Article Test Report and [\$\_\_\_] without First Article Test Report is correct as submitted."

The protester, by letter of January 24, submitted this BAFO statement in which it did not take exception to the terms of the amended RFP or change its initial proposed prices. One of the other two offerors chose not to submit a response to the second BAFO request; and the other offeror increased its proposed prices in its response. Pro-Fab's BAFO offered the lowest prices.

The Army thereafter requested the SBA to recertify its COC determination of Pro-Fab. The SBA recertified Pro-Fab's COC on February 22. On March 13, at the agency's request, Pro-Fab extended the acceptance period of its proposal until April 23. During this time, a recently assigned substitute contracting

officer requested an opinion from Army engineers regarding the significance of the engineering change proposal that was incorporated into the RFP by the terms of the second request for BAFOs. In response, the Army engineers stated that the engineering change proposal contained "significant technical changes which improve producibility and update the technical data package . . . and thus should be applied to all future contracts." On the basis of this summary opinion, and the fact that only three firms competed on these technical changes, the contracting officer determined that cancellation and resolicitation of the requirement were in the best interests of the government. The RFP was canceled on March 22. Pro-Fab, which received notice with reasons for the cancellation on March 29, filed its protest with our Office on April 10.

Pro-Fab first challenges the reasonableness of the agency's cancellation of the RFP. The protester essentially contends that the technical data changes incorporated into the RFP by the agency's second request for BAFOs were not substantial, but were clarifications and corrections to existing specifications and drawings that did not greatly affect the end product or cost. The protester disagrees with the Army's position that resolicitation would result in increased competition or cost savings and contends that agency documents themselves show that no collateral savings were anticipated from the changes. Pro-Fab argues that since it participated in adequate competition among three small business offerors for the contract award, and Pro-Fab received a COC and recertification of the COC from the SBA, it is entitled to an award under the canceled RFP as the low-priced, acceptable offeror. Pro-Fab also suggests that the agency's cancellation was an attempt to circumvent the COC.

The Army responds that it reasonably canceled the RFP due to the "marginal competition" held on the technical data changes introduced by the second BAFO request. The Army states that by the time of the second request for BAFOs, three of the six initial small business offerors had been excluded from the competition as nonresponsive. The Army further states that since prices have not been exposed, and since it believes these technical changes will improve the "producibility" of the item, the potential for increased competition and cost savings upon resolicitation support its cancellation determination. The agency contends that Pro-Fab's suggestion of any bad faith by the Army is speculative and is not supported by the facts of this procurement.

Under Federal Acquisition Regulation (FAR) § 15.608(b)(4), a procuring agency may reject all proposals received in response to an RFP if cancellation is "clearly in the Government's interest." Thus, while an agency need not have a "compelling reason" to cancel an RFP as it would to cancel an invitation for bids, FAR § 14.404-1(a)(1), it must have a reasonable basis for such an action. Griffin Servs. Inc., B-237268.2 et al., June 14, 1990, 90-1 CPD ¶ 558; G.K.S., 68 Comp. Gen. 589 (1989), 89-2 CPD ¶ 117. FAR § 15.606 provides the following guidance for situations where, as here, there are changes in government requirements during the acquisition cycle:

"(a) When, either before or after receipt of proposals, the Government changes, relaxes, increases, or otherwise modifies its requirements, the contracting officer shall issue a written amendment to the solicitation. . . .

(b) In deciding which firms to notify of a change, the contracting officer shall consider the stage in the acquisition cycle at which the change occurs and the magnitude of the change, as follows: . . . .

(4) If a change is so substantial that it warrants complete revision of a solicitation, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition. . . ."

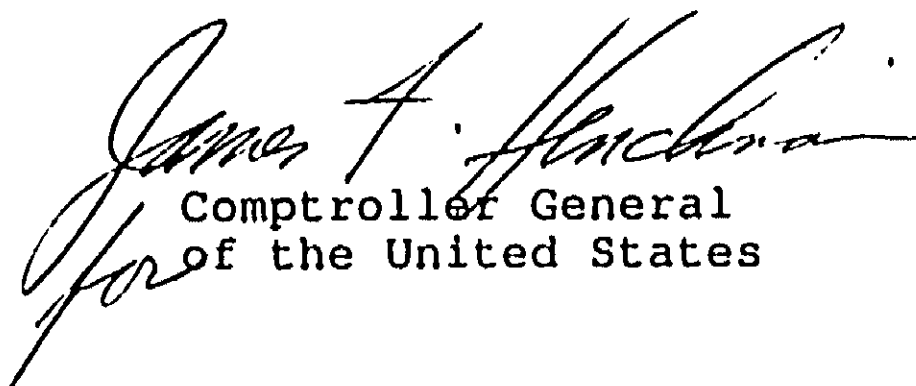
We find no factual basis in the record to warrant cancellation of the RFP. Although the Army states that the relevant technical data changes are significant and would improve the producibility of the item (and thus would increase competition), the record does not support the agency's position. For instance, several technical changes (e.g., dimensional alterations regarding tapering which reduce existing tolerances) may, as Pro-Fab points out, actually degrade producibility. The protester also demonstrates that although the contractor must make many drawing corrections due to the added engineering change proposal, most of these changes, such as those to the bolt alternate feeder, would have only an inconsequential effect, if any, on the overall producibility of the required item.

Significantly, the agency's own technical documentation describing the anticipated impact of the changed requirements illustrates that no cost impact was anticipated, that there were no anticipated implementation costs, and that no collateral savings were to be expected. Specifically, the

technical evaluators, in reviewing the cost impact of the changed requirements, stated that "no cost of implementation" and "no cost concession" would result from such changes. As such, we do not find the unsupported assertion regarding potential savings a sufficient basis upon which to cancel the RFP. The agency's speculation that increased competition or cost savings will result from resolicitation of the identical requirements is not supported by the record, and the amended requirements have already been competed pursuant to the second request for BAFOs. In sum, the record does not provide a reasonable basis for the Army's cancellation of the RFP.

Accordingly, the protest is sustained.1/

We recommend reinstatement of the RFP. We see no reason to require another round of discussions since the offerors were given two opportunities to submit their BAFOs and the agency received an acceptable offer from Pro-Fab at a reasonable price. Since the protester previously received a COC from the SBA, we recommend that the Army make an award to the protester.2/ We are so advising the Secretary of the Army. Further, we find Pro-Fab to be entitled to the costs of pursuing the protest. 4 C.F.R. § 21.6(d)(1) (1991); see Falcon Carriers, Inc., 68 Comp. Gen. 206 (1989), 89-1 CPD ¶ 96.

  
Comptroller General  
of the United States

---

1/ Since we find the cancellation unreasonable on these grounds, we see no reason to further consider the protester's allegations of any bad faith by the agency.

2/ We understand that during the course of the protest, the Army misplaced Pro-Fab's second BAFO. Since the agency acknowledges that the BAFO consisted of the requested affirmation, quoted above, and that it did not alter Pro-Fab's proposed prices or take exception to the terms of the amended RFP, we find that no prejudice would result from requesting a duplicate of the protester's BAFO statement as the basis of award. See, e.g., Physio Control Corp., B-234559 et al., June 26, 1989, 89-1 CPD ¶ 599.